

**MINUTES  
of the  
FIRST MEETING  
of the  
ETHICS SUBCOMMITTEE  
of the  
NEW MEXICO LEGISLATIVE COUNCIL**

**September 14, 2007  
Room 317, State Capitol  
Santa Fe**

The first meeting of the Ethics Subcommittee of the New Mexico Legislative Council was called to order by Representative W. Ken Martinez, co-chair, at 10:30 a.m. in Room 317 of the State Capitol in Santa Fe.

**Present**

Rep. W. Ken Martinez, Co-Chair  
Sen. Michael S. Sanchez, Co-Chair  
Rep. Daniel R. Foley  
Sen. Stuart Ingle  
Sen. Leonard Lee Rawson  
Rep. Thomas C. Taylor

**Absent**

Sen. Mary Jane M. Garcia  
Rep. Sheryl Williams Stapleton

**Staff**

Jennie Drage Bowser, National Conference of State Legislatures (NCSL)  
Evan Blackstone, Staff Attorney, Legislative Council Service (LCS)  
Jon Boller, Staff Attorney, LCS  
Raúl Burciaga, Assistant Director for Drafting Services, LCS  
Ric Gaudet, LCS  
Peggy Kerns, NCSL  
John Yaeger, Assistant Director for Legislative Affairs, LCS

**Guests**

The guest list is in the meeting file.

**Handouts**

Copies of handouts given by meeting presenters are in the meeting file.

**Friday, September 14**

**Ethics Reforms and Trends in the States**

Ms. Kerns, director, NCSL Center for Ethics in Government, gave the subcommittee a review of ethics reforms in state legislatures around the country. She said that citizens' trust in government has declined recently, partly due to scandals in the federal government. Although the scandals happened at the federal level, they are treated as scandals at the local level as well. Public officials have a heavier burden than private citizens to remain ethical. Even though a legislator may be following the law, the legislator still may be behaving unethically.

Ms. Kerns said that state legislatures began reacting to congressional scandals in 2005. In the two intervening years, 47 state legislatures have introduced ethics reform laws. Florida passed a very strict law prohibiting all gifts to elected officials. In Colorado, a voter-initiated amendment to the state constitution was passed that bans any gifts to public officials, all government employees and their families. The initiative that passed covers hundreds of thousands of people and is currently being challenged in court.

Senator Sanchez asked if there were any states that passed tougher ethics laws in reaction to a public official who broke the law and was prosecuted instead of in reaction to an ethics problem that occurred that at the time was not against the law. Ms. Kerns said that North Carolina and Alaska strengthened ethics laws in response to an already illegal action of a state official.

Representative Taylor said that the recent state treasurer scandal in New Mexico was the impetus for the creation of the current Ethics Subcommittee and the Governor's Ethics Reform Task Force. None of the reforms made in the past two years would have had any effect on the state treasurer scandal because the actions committed were already against the law. Ms. Kerns agreed, but said that legislative review of ethics laws is not a wasted effort in the eyes of the public.

Senator Rawson said that although most state reform efforts are concerned with the lobbyist-legislator relationship, New Mexico also has plenty of problems with lobbyist influence in the executive and judiciary branches. Ms. Kerns said that Georgia and New Jersey ethics reforms began as a result of a scandal in those states' governor's offices. She said that although a state legislature can pass ethics laws for other branches of government, it can also set a much stronger example for its members in the legislature by having strong legislative ethics committees and ethics rules.

Senator Sanchez asked whether, under the newly enacted Gift Act, New Mexico legislators may accept dinners at private functions. Stuart Bluestone of the attorney general's office responded that legislators may accept such gifts as long as the value of the dinner does not exceed the single-event limit of \$250 or the total yearly limit of \$1,000 per lobbyist. He clarified that it is the lobbyist's responsibility to report the value of the dinner, and not the legislator's.

Ms. Kerns said that in South Carolina, lobbyists can buy dinner for legislators if everyone in the chamber or committee is invited to the function. Senator Rawson asked whether that exception applies to caucuses. Ms. Kerns said she would investigate that question and provide a response to the subcommittee.

The state of Kentucky passed a law that restricts the total value of gifts a lobbyist may give to a legislator to \$100 per year. Ms. Kerns said that lobbyists are required to report the gifts, which has resulted in a decrease in lobbyist-funded meals because lobbyists have wished not to disclose such gifts.

Senator Sanchez asked whether the states that have passed strict ethics and gift laws also have legislative salaries. Ms. Kerns said that she would research that question for the subcommittee.

Ms. Kerns then discussed recent trends in ethics laws. She said that several states have no restrictions on gifts to legislators, but require full disclosure of all gifts. That system is seen as the weakest form of regulation. The trend in most states is toward full disclosure of gifts and restrictions on the value of gifts that are permitted. There is also a trend on restricting the revolving door practice of legislators becoming lobbyists soon after leaving office.

Senator Rawson asked if other states have restrictions on executive branch employees becoming lobbyists. Ms. Kerns said that while some states restrict the activities of public officials after leaving office, no state restricts the activities of former government employees.

## **Lobbyist Regulation Laws: National and New Mexico Review**

### National Trends in Lobbyist Regulation

Ms. Kerns reviewed for the subcommittee national trends in lobbyist regulation laws. She said that states are requiring more reporting of expenditures and income from lobbyists. Some examples include requiring reporting the costs of lobbying; reporting itemized expenditures; disclosure of who benefits from the lobbying; disclosure of the financial connections of the lobbyist or lobbyist's employer and the legislator or legislator's family; and more frequent reporting. The idea, she said, is not to restrict lobbyists' activities, but to disclose the activities.

Some states require disclosure of lobbyist income per issue lobbied for. Other states require lobbyists to wear state-issued badges identifying them as lobbyists. Some states also require disclosure of "goodwill lobbying", in which lobbyists provide meals in a social setting without actually discussing issues with legislators.

Senator Sanchez asked, referring to his own family, whether a lobbyist who was also a close personal friend or family member of a legislator would be required to disclose the purchase of the legislator's lunch. Ms. Kerns said that although the disclosure laws need to be complied with, they also need to be written in such a way as to be reasonable.

Ms. Kerns then discussed ethics commissions in the states. Ethics commissions usually perform investigatory functions, as well as provide educational services. She said that most states do have ethics commissions, with the notable exception of most inter-mountain states, including New Mexico. She postulated that those states also tend to have less active legislatures and do not feel the need for such a formal body. In some states, the ethics commission tends to focus more on enforcement of ethics laws, while other states focus more on educating legislators and other public officials on following the ethics laws.

Senator Sanchez asked whether advice given to a legislator by an ethics commission is made confidential by statute. Ms. Kerns said that most states' statutes imply confidentiality of such information, but do not actually specify it. Senator Sanchez said that if New Mexico had an ethics commission able to issue advice to legislators, unless the advice were specifically made confidential, the Foundation for Open Government would claim that the information is a public record. Mr. Bluestone said that the ethics commission law that was proposed in the 2007 regular legislative session had a provision that made advisory requests and opinions confidential. Senator Sanchez said that language in that bill needed specific and stiff penalties for any type of unlawful disclosure of confidential information, including penalties for the press if it publishes the information.

Ms. Kerns said that, in two states, if a lawmaker asks the ethics commission for advice, the lawmaker is required to follow the advice given. She also said that some commissions have the ability to subpoena witnesses. Representative Martinez said that in the proposed New Mexico ethics commission law, there was a provision that if a person follows the advice of the commission, that fact would become a defense against any future adjudicatory action against the person.

#### New Mexico Lobbyist Regulation Laws

Mr. Blackstone and Mr. Boller provided the subcommittee with a review of current lobbyist regulation laws in New Mexico. Mr. Blackstone discussed the Lobbyist Regulation Act (LRA), which provides for annual registration of lobbyists; requires reporting of expenditures and political contributions; restricts lobbyists' fees, campaign activities and contributions; provides for education and advisement of lobbyists; and provides for civil penalties and binding arbitration.

The LRA defines lobbying as attempting to influence a decision related to any matter to be considered by the legislature or a legislative matter requiring action by the governor, or attempting to influence the action of a state official or body in a rulemaking proceeding. "Lobbyist" is defined as generally including anyone who is compensated to lobby, someone who is designated by an interest group or organization to lobby or someone who lobbies in the usual course of the person's employment.

The LRA provides registration requirements for lobbyists, including detailed information about lobbyists' employers, funding sources for lobbyist expenses and the nature and subject matter of lobbying services provided. The act also has extensive reporting requirements of all

expenditures and political contributions made with regard to a state candidate or election issue, an official action or pending legislation. Generally, expenditures must be reported and itemized by amount, date, purpose, type of expenditure and name of the person who has benefitted. Expenditure reports must be made to the secretary of state on January 15 and May 1 and must be made during a legislative session within 48 hours of each \$500 expenditure.

The LRA prohibits lobbyists from engaging in certain activities, including receiving contingency fees; serving as a campaign chair, treasurer or fundraising chair for a legislative or statewide candidate; and making political contributions during a prohibited period roughly corresponding to regular or special sessions of the legislature. Finally, the LRA provides civil remedies and penalties for violations of the act.

Representative Foley asked whether a citizen who has a financial interest in legislation is defined as a lobbyist. Mr. Blackstone said that the person would not be classified as a lobbyist if the person is lobbying on the person's own behalf.

Senator Rawson asked how legislators can know if lobbyists are reporting their expenditures and political contributions. Mr. Blackstone responded that lobbyist reporting requirements are entirely the responsibility of the lobbyist, and not the legislator.

Mr. Boller reviewed for the subcommittee the recently enacted Gift Act, which limits gifts from lobbyists and their employers to candidates for state office and state officers and their employees and families. The act limits the value of a single gift from a lobbyist to \$250 and caps the yearly amount each individual may receive at \$1,000. The person receiving the gift is prohibited from knowingly accepting it if its value exceeds \$250. The person giving the gift also must not knowingly give it if it exceeds \$250 or if the cumulative total for the year exceeds \$1,000. Violation of the Gift Act constitutes a petty misdemeanor.

### **Campaign Finance Laws: National and New Mexico Review**

Ms. Bowser, NCSL elections analyst, gave a presentation to the subcommittee on campaign finance laws throughout the nation. Her presentation was divided into four parts.

#### Contribution Limits

Most states have some sort of limitations on political contributions to candidates for office. Most limit the amount that can be given to a candidate. A few states ban or limit contributions from corporations, and two states prohibit contributions from political parties. Five states, including New Mexico, have no political contribution limits. The amount allowed for individuals to contribute to gubernatorial candidates per election cycle varies from \$500 to \$55,900, but the median limit is \$4,000. Contribution limits for house and senate seats are approximately one-half of the gubernatorial limits.

Contributions to political action committees (PACs) are also widespread throughout the nation. Thirty-six states limit PAC contributions, with 13 of those states banning or limiting corporate contributions to PACs. Fourteen states, including New Mexico, have no limits on

contributions to PACs. The median individual contribution limit to a PAC is \$5,500 per two-year election cycle, but the limits range from \$500 to \$100,000.

Senator Rawson said that campaign contribution limits in New Mexico would need to be adjusted to the geographic size of the district a legislator represents, because rural candidates would have to spend more money getting their message out than urban candidates. Ms. Bowser said that the cost of access to media is also a factor in setting contribution limits.

Thirty states set some limit of allowable cash contributions. Nineteen states restrict or prohibit political contributions by minors, and five states either restrict or prohibit political contributions by lobbyists. Mr. Blackstone, responding to a question from Senator Sanchez, said that New Mexico limits anonymous cash contributions to \$100. However, New Mexico is one of a few states that requires disclosure by the candidate of all contributions.

Ms. Bowser described some states' "pay-to-play" restrictions, in which contributions from businesses that do business with the state are prohibited or restricted. Although the business is usually prohibited from contributing to a candidate, a PAC associated with that business and individual officers and partners in the business are often allowed to contribute up to a certain amount. New Jersey has the strictest pay-to-play law, which prohibits contributions from the business, any PAC associated with it and its officers and partners from making any contribution to candidates for certain state offices, political parties or leadership PACs.

The difficulty with pay-to-play laws, Ms. Bowser said, has been enforcement. It is often unclear which government entity is responsible for enforcing the pay-to-play laws, and often the penalty for violation of the laws is unclear.

Approximately one-half of the states prohibit or restrict contributions to legislators and other elected public officials during the legislative session. New Mexico prohibits contributions just prior to and shortly after its legislative session.

#### Campaign Finance Disclosure

Ms. Bowser reviewed a report published by a group consisting of the UCLA School of Law and the California Voter Foundation that ranked the states according to four campaign finance disclosure criteria. The criteria include the comprehensiveness of the campaign disclosure law, whether electronic filing is mandatory, the accessibility to the public of the information and the user-friendliness of the online information.

According to the criteria, New Mexico received an "F" and was ranked fortieth among the states. Although New Mexico has a mandatory electronic filing program for candidates, the information is very difficult to access by the public, and the secretary of state's web site, where the information is displayed, is very cumbersome and does not summarize any figures. Also, New Mexico does not require disclosure of independent expenditures, which often play a large role in elections.

Representative Martinez questioned the validity of the report, saying that New Mexico has stringent campaign finance disclosure laws and that the only real problem seems to be online accessibility issues. He also mentioned that the U.S. Supreme Court recently overturned certain restrictions on independent expenditures. Ms. Bowser said that the court only overturned blackout periods for making independent expenditures, but left alone disclosure requirements of those expenditures. She said the court has usually been very permissive with campaign finance disclosure laws, but has tended not to accept restrictions on campaign expenditures or contributions.

Representative Martinez expressed frustration with New Mexico's current requirement of electronic filing, especially in rural areas. He said there have been occasions in which he finished entering a report from his dial-up connection, only to see all the information he entered disappear into the netherworld of the internet. Ms. Bowser said that Colorado is now allowing different kinds of electronic filing, such as submission on a CD, to avoid dial-up disasters.

Senator Sanchez said that the dissemination of campaign finance information is the problem in New Mexico, not the actual reporting requirements. He asked whether the recent push to reform ethics laws is coming from groups like Public Citizen and the media. Ms. Bowser said that in most states, that is true. Senator Sanchez said that although most citizens would not rate ethics reform as their top priority for the legislature to enact, citizen groups and the media exert great pressure on legislators to pass those laws. He said that the legislature should enact laws because they are needed, not because of media and interest group pressure.

Representative Foley said that citizens can access information about elected officials in New Mexico, but it is difficult to find out the ownership and political biases of media outlets. He said that media outlets need to disclose their own vested interests.

Senator Ingle said that many of the recent ethics scandals that occurred recently in New Mexico were already against the law, and new ethics laws and rules would not have stopped them from occurring.

#### Public Financing of Elections

The trend in the states to provide public financing of political campaigns is growing, said Ms. Bowser. Six states, including New Mexico, provide full grants to candidates running for office. New Mexico provides grants only to public regulation commissioner and judicial candidates, however. Nine states provide partial funding to candidates, and five states provide grants to political parties. Nine states provide tax breaks to individuals who contribute small amounts to a political candidate of their choice.

States that provide partial funding for candidates have seen mixed results from the program, depending on the funding source for the program. While Hawaii has seen decreases in citizen participation in funding the program, with a corresponding lack of participation by candidates because of shortfalls in available grants, Minnesota has not seen such a decrease. Instead, the number of candidates participating in the program has remained over 80% per

election, while the funding stream has only slowly declined.

### Enforcement

Enforcement of campaign finance laws is always the weakest link, said Ms. Bowser. The agency that is charged with enforcing the law is often controlled by the same group of people the agency is supposed to regulate. Budgets are usually insufficient to perform the job, partisan pressures are often present and there is often limited enforcement authority.

Senator Sanchez asked about how appointments to ethics commissions with enforcement authority are made in other states and whether commissioners are paid. Ms. Bowser said that often the legislative leadership and the governor appoint the commissions, while other states have blue-ribbon commissions of independent citizens to appoint members of the ethics commission. She said commissioners are paid per diem and mileage, but none is paid a salary. Mr. Bluestone said that in the recent legislative session, the proposed ethics commission members would have been paid per diem and mileage. There was also a provision for salaried staff members of the commission.

### **Public Comment**

Kay Linden spoke to the subcommittee and said that although government service is a very honorable service to the people, it is the money in the system that is the problem. Lobbyists should not be allowed to buy gifts to influence legislation, she said. Goodwill dinners are just attempts to soften up legislators for future legislation. Access to campaign finance reports is very cumbersome, because data in New Mexico are not summarized. Finally, she said that contributions to elected officials shortly after an election should be abolished because the only reason someone would contribute after an election would be to buy legislation.

### **Subcommittee Business**

The remaining agenda items for the subcommittee's meeting were postponed until the next meeting.

Mr. Bluestone suggested to the subcommittee that it hear from the governor's ethics reform task force to identify the common ground between the two groups. Representative Martinez agreed and asked that each issue group leader on the task force testify before the subcommittee.

Senator Sanchez said that he hopes the subcommittee will make its recommendations, based on the task force's work and on the subcommittee's own ideas, to the Legislative Council and legislature by the end of the interim.

Senator Rawson said that any ethics reform legislation the subcommittee endorses needs to include the executive and judicial branches, local governments and government employees.

There being no further business, the subcommittee adjourned at 3:00 p.m.



